

**COMMISSION FOR MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES AND
SUBSTANCE ABUSE SERVICES**

Rules Committee Minutes

**Clarion Hotel State Capital
320 Hillsborough Street
Raleigh, NC 27603**

Thursday, May 27, 2010

Attending:

Rules Committee Members: Jerry Ratley, Jennifer Brobst, Dr. Richard Brunstetter, Debra Dihoff, Cindy Ehlers, Dr. James Finch, Matthew Harbin, Emily Moore, Pamela Poteat, Don Trobaugh

Excused Absences: John R. Corne, Carl W. Higginbotham, David Turpin

Division Staff: Denise Baker, Amanda J. Reeder, Andrea Borden, Martha Lamb, Bill Harris

Others: Dr. John Carbone, Betty Gardner, Susan Pollitt, Sarah Tackett, Elizabeth Albiston, Melynn Glusman, Rodney Crooms

Call to Order:

Jerry Ratley, Chairman, called the meeting to order at 2:30 p.m. Mr. Ratley read the Ethics Reminder and asked if any members had a conflict of interest or appearance of conflict with respect to any matters coming before the Rules Committee. There were none.

Proposed Amendment/Adoption of North Carolina Department of Correction: Standards for Mental Health and Mental Retardation Rules 10A NCAC 26D .0908 - .0601

Mr. Ratley reviewed the rules that the Committee discussed as well as those voted on during the May 6, 2010 meeting. Mr. Ratley added that the Committee ended its official discussion at Rule 10A NCAC 26D .0904, after there was no longer a quorum present. The members that remained discussed additional rules, 26D .0908 – .1105 and suggested changes. Mr. Ratley asked Amanda J. Reeder, Rulemaking Coordinator, to read the changes that were suggested by the remaining members for Rules .0908 - .1105 at the May 6, 2010 meeting. Mr. Ratley further stated that after the review he would entertain a motion to accept the proposed amendments to rules .0908 - .1105.

Rule 10A NCAC 26D .0908:

1. Dr. Richard Brunstetter, Rules Committee member, questioned the ability of the Department of Correction (DOC) to track an inmate once they have left the facility to ensure that they are adhering to the aftercare plan. Mrs. Reeder responded that DOC does not have the statutory authority to track an inmate once they left the DOC system. Dr. John Carbone, Commission member, stated that while the DOC would theoretically want to have this information, he did not believe that it was appropriate that it be required in Rule .0908. Dr. Carbone further stated that DOC, due to both a lack of statutory authority and available staffing, does not have the ability to track or follow-up with each inmate upon release. Dr. Carbone stated that if there was an LME or social worker that is repeatedly not following through with the aftercare plan, such that the former inmate is

not making necessary connections for treatment in the community, the DOC would want to know about that. Dr. Carbone added, however, that he was not sure the Commission has the ability to require DOC to conduct regular follow-ups of people who have already been discharged, as the DOC does not have authority to track released inmates.

2. Debra Dihoff, Rules Committee member, stated that the Committee previously discussed the issue of following up after inmates have been discharged and suggested that research needed to be done to see if language regarding the same could be inserted into the LME rules. Ms. Dihoff suggested that the Committee ask the DMH/DD/SAS staff to bring the LME rules to the next meeting for review. The Committee did not act on this suggestion.
3. Dr. Finch suggested amending Rule .0908(a) or (f) by adding the phrase, “with particular attention to risk of harm to self or others if noncompliant with follow-up” to ensure that aftercare planners were considering such concerns when formulating the plan. Dr. Carbone stated that this would require risk assessment, and it would be very difficult for mental health and mental retardation staff to be able to correctly predict future behavior of the inmates once they are in the community. After the discussion, the Committee decided against adding the proposed amendment.

Rule 10A NCAC 26D .1005:

Ms. Brobst, Rules Committee member, inquired why the term “mental retardation” was not included in Rule .1005, as the rule only addressed the mental health level of care. Ms. Brobst stated that throughout the Subchapter, the rules distinguish between mental health and mental retardation, and suggested the term be added to the rule in order to be consistent. Ms. Brobst suggested that the title be changed to reflect the inclusion of the term into the rule.

Rule 10A NCAC 26D .1104:

Ms. Brobst made the following suggestions to amend the rule. She suggested that subsection (f)(2)(B) include language that the client will be informed of his/her right to a Client Representative. Further, subsection (f)(C)(iii) should include language to state that the client representative should be allowed to present evidence. Finally, Ms. Brobst suggested amending the language in subsection (g)(1)(B) to state that the client representative is allowed to present evidence and ask questions of witnesses, consistent with their role as a client representative.

Ms. Brobst also inquired about the possibility of the client requesting a different person to represent him, rather than the one assigned by the DOC. Dr. Carbone and Ms. Gardner responded that this has never happened before. Dr. Carbone added that usually, the individuals who serve as client representatives are from the Recreation Therapy (RT) Department, and are viewed as unbiased. Dr. Carbone added that it was very helpful to use staff from RT, as those staff members work on a daily basis with the clients, and generally know which inmates are doing well or not doing well.

Upon motion, second, and unanimous vote the Rules Committee approved the proposed amendments to Rules 10A NCAC 26D .0908 - .1105 and, as amended, for the rules to be forwarded to the full Commission.

The Rules Committee reviewed Rules 10A NCAC 26D .1205 - .1601. The following are recommendations from the Rules Committee member:

Rule 10A NCAC 26D .1205: The Committee members suggested adding language to (f) to state that the inmate or his guardian may give the facility permission to contact the inmate's family upon transfer.

Rule 10A NCAC 26D .1206: The Committee members suggested adding language to (h) to state that the inmate or his guardian may give the facility permission to contact the inmate's family upon transfer.

Rule 10A NCAC 26D .1207: The Committee members suggested adding language to (9) to state that the inmate or his guardian may give the facility permission to contact the inmate's family.

Rule 10A NCAC 26D .1302: The Committee members suggested adding language to (f)(6) that the proposed research designs must conform to ethical standards.

Rule 10A NCAC 26D .1601: Ms. Brobst suggested the removal of the word "licensed" in reference to psychiatrist within the rule, as the term as defined in Rule .0103 of the subchapter requires that the psychiatrist be licensed.

Upon motion, second, and unanimous vote the Rules Committee approved the proposed amendments to Rules 10A NCAC 26D .1205 - .1601, and, as amended, for the rules to be forwarded to the full Commission.

Mr. Ratley stated that because several members needed to leave the meeting, resulting in the loss of the quorum, the Committee would review Rules 10A NCAC 26D .1202 & .1203 at the July Committee meeting. Mr. Ratley asked the Committee members to review the rules and come prepared to make any revisions to the rules at that meeting.

Approval of Minutes:

Upon motion, second, and unanimous vote, the Rules Committee approved the minutes of the April 21 and May 6, 2010 Rules Committee Meetings.

Public Comment

Elizabeth Albiston, NC Prison of Legal Services, thanked the Committee for considering the comments that the organization submitted. Ms. Albiston added that they made similar comments regarding the involuntary transfer rules, and they believe that these are very important rules.

Susan Pollitt, Disability Rights of North Carolina, urged the Committee to require that the DOC use the community standard for the use of seclusion and restraints.

There being no further business the meeting adjourned at 3:45 pm.